

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE SEPTEMBER 11th LITIGATION
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: 21 MC 97 (AKH)

:
: **OPINION AND ORDER PARTIALLY**
: **GRANTING AND PARTIALLY**
: **DENYING DEFENDANTS' MOTIONS**
: **TO DISMISS PURSUANT TO THE**
: **WAIVER PROVISION OF THE AIR**
: **TRANSPORTATION SAFETY AND**
: **SYSTEM STABILIZATION ACT**

This Opinion and Order Relates To:
See Attached Schedule A

ALVIN K. HELLERSTEIN, U.S.D.J.:

Congress gave the victims of the terrorist-related aircraft crashes of September 11, 2001 and their families a choice of remedy: the Victim Compensation Fund or a traditional lawsuit, and required claimants to choose between them. The motions that I now decide relate to the choice that Congress required.

Special Master Kenneth R. Feinberg, in the context of the extraordinary aftermath of September 11 and reflecting the generosity manifested in the Congressional will, expended a substantial effort in educating the public as to how the Victim Compensation Fund would work. He and his staff were completely accessible, to the point of inviting informal inquiries and submissions, and making informal determinations of probable recoveries. Many claimants responded to the Special Master's efforts, and presented him with substantial elements of their potential claims. An appreciable number decided, however, for good and sufficient reasons, not to proceed with their claims to the Victim Compensation Fund and to withdraw from it, in order to pursue a lawsuit in this court.

The issue presented by defendants' motions to dismiss such plaintiffs' claims on the ground of waiver requires me to evaluate if the actions and submissions of various plaintiffs, grouped into three categories, constituted a waiver of suit pursuant to section 405(c)(3)(B) of the Air Transportation Safety and System Stabilization Act.

I. Statutory and Regulatory Background

On September 11, 2001, terrorists hijacked airplanes and deliberately flew them into the twin towers of the World Trade Center in New York City and the Pentagon in Virginia. Another hijacked airplane crashed near Shanksville, Pennsylvania after passengers attempted to recapture the aircraft. Nearly 3,000 people in the airplanes and on the ground died, and many others were injured. In the weeks following September 11, Congress passed into law the Air Transportation Safety and System Stabilization Act of 2001, Pub. L. No. 107-42, 115 Stat. 230 (2001) (codified at 49 U.S.C. § 40101) (the Act) to protect the airlines against exposure to financial ruin, and to provide victims and their family members with an expedient method of recovery. The Act was subsequently amended on November 19, 2001 and January 23, 2002. See Pub. L. No. 107-71, 115 Stat. 631 (2001); Pub. L. No. 107-134, 115 Stat. 2435 (2002).

The Act provides alternative modes of recovery to those who were injured and to the legal representatives of those who died as a result of the terrorist-related aircraft crashes of September 11, 2001. One alternative is a traditional lawsuit. Section 408(b)(1) of Title IV provides for a federal cause of action "for damages arising out of the hijacking and subsequent crashes." Such actions are to be brought in the United States District Court for the Southern District of New York, as a matter of its "original and exclusive jurisdiction over all actions brought for any claim (including any claim for loss of property, personal injury, or death) resulting

from or relating to the terrorist-related aircraft crashes of September 11, 2001.” The Act § 408(b)(3). The governing law for suits brought under the Act is to be “derived from the law, including choice of law principles, of the State in which the crash occurred unless such law is inconsistent with or preempted by Federal law.” The Act § 408(b)(2).

The other mode of recovery is for eligible claimants to apply to the Victim Compensation Fund (VCF) for compensation awards. The Act, Title IV. The Act limits eligible claimants to a victim or the personal representative(s) of a victim who: (i) was present on one of the hijacked planes or at the World Trade Center (New York, New York), the Pentagon (Arlington, Virginia), or the site of the aircraft crash at Shanksville, Pennsylvania at the time, or in the immediate aftermath, of the terrorist-related aircraft crashes of September 11, 2001; and (ii) suffered physical harm or death as a result of such an air crash. The Act § 405(c). A claimant must waive his right to file a civil action (or to be a party to an action) in any federal or state court, except for a suit to recover “collateral source obligations” (for example, insurance or other such items which, under the Act, are deducted from VCF awards), and except for suits against those knowingly involved in the hijackings. The Act §§ 405(c)(3)(B)(i), 408(c).

To administer the VCF, the Attorney General appointed Kenneth R. Feinberg as Special Master. The Act grants the Special Master the power to make all “procedural and substantive rules for the Act’s implementation.” § 404(a). In order to implement the VCF, the Department of Justice (DOJ), in consultation with the Special Master, published procedural rules. An “Interim Final Rule” was published on December 21, 2001, and a “Final Rule” (the regulations) was published on March 13, 2002. See 66 Fed. Reg. 66,274 (Dec. 21, 2001); and 67 Fed. Reg. 11,233 (Mar. 13, 2002) (codified at 28 C.F.R. pt. 104).

The Act specifies that only “one claim may be submitted” by a victim or personal representative on behalf of a deceased victim’s injuries or death. § 405(c)(3)(A). The regulations define “personal representative” as “an individual appointed by a court of competent jurisdiction as the personal representative of the decedent or as the executor or administrator of the decedent’s will or estate.” 66 Fed. Reg. at 66,277. If no personal representative is appointed by a court or if the personal representative is disputed, the Special Master may determine who is the personal representative based on the decedent’s will or the intestacy laws of the decedent’s state. 28 C.F.R. § 104.4(a)(2) (2003). Reliance on state law insured that different personal representatives for the same decedent would not be able both to file a claim with the VCF and sue at law. See 66 Fed. Reg. at 66,277.

The personal representative acts on behalf of the decedent’s estate in matters before the VCF. Prior to filing a claim, the personal representative must provide notice of a claim to the decedent’s family and any potential heirs. 28 C.F.R. § 104.4(b). Upon receipt of a VCF award, the personal representative is required to distribute it “in a manner consistent with the law of the decedent’s domicile or any applicable rulings made by a court of competent jurisdiction.” 28 C.F.R. § 104.52. Before an award is paid, the personal representative must provide a distribution plan to the Special Master. Id. If the Special Master concludes that the plan does not adequately compensate the victim’s family, he is given authority to redirect distribution of all or part of the award. Id.

To file for compensation, a claimant must submit, as developed by the Special Master, an eligibility form and a compensation form for either a personal injury or a death, or for immediate advanced benefits. 28 C.F.R. §§ 104.21 and 104.22. The forms developed by the

Special Master contain four parts. Part I identifies the victim, establishes eligibility and provides for election of advanced benefits. Part II specifies the information required to calculate an award and includes the personal representative's plan to distribute an award. Part III encompasses the notification the personal representative must provide to the family and potential heirs of the victim, authorization for release of information and certification that information provided is accurate and complete. Part IV provides a supporting documentation checklist, identifying documentation that must be submitted. Parts I and III also require an acknowledgment that "by submitting a substantially complete Compensation Form for Deceased Victims" the claimant waives the right to maintain a civil action. The Special Master also developed a form to permit individuals to object to the authority of the personal representative or to provide a statement of interest in a victim's award.

Once a claim is filed, the Special Master is to review the file and make a determination within 120 days. The Act § 404(b)(3). Pursuant to the regulations, a claim is "filed" "when a Claims Evaluator determines that both the eligibility form and either a personal injury compensation form or a death compensation form are substantially complete." 28 C.F.R. § 104.21(a). See In re September 11 Litigation, 2003 U.S. Dist. LEXIS 23561, at *3-4 (S.D.N.Y. Dec. 19, 2003).

The VCF under Special Master Kenneth R. Feinberg's superb and sensitive administration has proven to be a great success. The Fund will have processed more than 7,300 death and personal injury claims by its closing on June 15, 2004, accounting for claims on behalf of more than 98 percent of those who lost their lives on September 11, 2001. The median award

for deceased victims, after offsets, is \$1.6 million. The Special Master and his staff have worked tirelessly to process these claims fairly and expeditiously.

II. Procedural Background

Victims of September 11 and family members of those who were killed in the attacks faced difficult decisions choosing between the VCF and pursuing litigation, while coping with the tremendous losses and the resulting emotional and physical turmoil they suffered. There were also different deadlines to consider. Congress provided two years from the promulgation of the regulations to submit claims to the VCF, or to December 22, 2003. The Act § 405(a)(3). Yet, often, the time to sue was shorter, and sometimes inflexibly jurisdictional, as for example, claims and lawsuits against the Port Authority of New York and New Jersey (the Port Authority), the City of New York and other defendants. In order that claimants would have the full two-year span provided by Congress to consider their choice of forum, yet satisfy state laws, I allowed lawsuits to be brought, thus tolling the statutes of limitations. I also created a suspense docket for such suits to avoid waiver of the right to make claim to the VCF, as provided by my Order of July 22, 2003. Initially, the suspense docket was to end on December 23, 2003; however, I extended it to February 6, 2004 to coincide with action taken by the VCF to enlarge to January 22, 2004 the period by which claimants could make their submissions substantially complete. See In re September 11 Litigation, 2003 U.S. Dist. LEXIS 23561, at *8 (S.D.N.Y. Dec. 19, 2003).

In December of 2003, plaintiffs, by order to show cause, moved for a ruling that a VCF submission to meet the December 22, 2003 statutory deadline, but which had not been deemed substantially complete, did not constitute an election of remedies under the Act. I held that “a claimant who satisfies the statutory and regulatory definition of filing or submitting a claim,

will have waived his right to sue, or to maintain his suit when that filing, or submission, is substantially complete as determined by the Special Master's Claims Evaluator or January 22, 2004, whichever is earlier, and not before then." In re September 11 Litigation, 2003 U.S. Dist. LEXIS 23561, at *9 (S.D.N.Y. Dec. 19, 2003).

The suspense docket ended on February 6, 2004 and, by Order of February 19, 2004, I dismissed cases that plaintiffs had not activated. On February 25, 2004, I ordered the VCF to produce under seal a list of active plaintiffs who also had claims pending before the VCF. Using this list, and information provided by plaintiffs' counsel, I generated a schedule of those plaintiffs with applications pending before the VCF and ordered them to show cause why their cases should not be dismissed pursuant to the waiver provision. By Order of March 18, 2004, I dismissed cases in which plaintiffs had gone into the VCF, and identified those that could proceed with their lawsuits, subject to defendants' motions to dismiss.¹ By Order of April 9, 2004, I identified additional cases that were subject to the defendants' motions and established an expedited briefing schedule, keeping in mind the possibility that the VCF would be able to process any dismissed claims prior to closing on June 15, 2004. Defendants have now brought summary judgement motions against 18 plaintiffs pursuant to my March 18 Order.²

¹ In addition to the current motions, the March 18 Order identified another category of cases, those involving German insurance companies alleging subrogation claims. These are being briefed pursuant to a separate motion schedule.

² The original motions were filed against 32 plaintiffs. The parties have worked together to resolve, either by withdrawing the motion or voluntarily dismissing the case, waiver questions against the following plaintiffs: 02 Civ. 0458 Rhonda Lopez v. UAL Corp., et al.; 02 Civ. 6364 Susanne Ward Baker and Doyle Raymond Ward v. United Airlines, Inc., et al.; 02 Civ. 7243 Lorne Lyles v. Argenbright Security, et al.; 02 Civ. 7147 Ana Raley v. AMR Corp., et al.; 02 Civ. 7271 Kellie B. Lee v. AMR Corp., et al.; 02 Civ. 7608 Margaret Ann Cashman v. Argenbright Security, et al.; 02 Civ. 10160 Catherine Powell v. Argenbright Security, et al.; 03 Civ. 6802 Katherine Bailey v. UAL Corp., et al.; 03 Civ. 6809 Rita Hashem v. AMR Corp., et

III. Discussion

The present summary judgement motions argue that three categories of affected plaintiffs waived their court claims: (1) plaintiffs who had filed claims with the VCF that were not withdrawn on or before January 22, 2004; (2) plaintiffs who submitted documentary evidence that defendants claim was sufficient for their claims to be substantially complete but without the Claims Evaluator having so deemed them; and (3) claims that were submitted by a decedent's personal representative where another related individual filed a lawsuit.³

Summary judgment may be granted if there are “no genuine issues as to any material fact and . . . the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party bears the burden of “informing the district court of the basis for its motion” and identifying the matter that “it believes demonstrate[s] the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The burden then shifts to the non-moving party to come forward with “specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). Although all facts and inferences therefrom are to be construed in favor of the party opposing the motion, Harlen Assocs. v. Village of Mineola, 273 F.3d 494, 498 (2d Cir. 2001), the non-moving party must raise more than just a “metaphysical doubt” as to a material fact. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

al.; 03 CV 7018 Burlingame, et al. v. AMR Corp., et al. (as to plaintiffs: Rosemary Dillard, Cynthia Droz, Geoffrey Judge and Amy Newton); 03 Civ. 7022 Suzanne Mladenick v. AMR Corp., et al.; 03 Civ. 7051 Madeleine Zuccala v. Minoru Yamasaki Associates, et al.; 03 Civ. 7071 Michael Sweeney v. American Airlines, Inc., et al.; and 03 Civ. 7076 Loretta Filipov v. American Airlines, Inc., et al.

³ Defendants American Airlines, Inc. and AMR Corp.; United Airlines and UAL Corp.; and World Trade Center Properties each filed a motion naming certain plaintiffs. Other defendants joined in specific portions of these motions. Appendix B is a chart showing which defendant joined in what part of the three motions.

“[M]ere speculation and conjecture is insufficient to preclude the granting of the motion.” Harlen, 273 F.3d at 499.

a. Claims allegedly not withdrawn on or before January 22, 2004

Defendants argue that pursuant to my December 19, 2004 ruling, a claim made to the VCF that was not withdrawn on or before January 22, 2004 constitutes an election of remedy and therefore a waiver of the right to maintain a civil action. The Act § 405(c)(3)(B)(i). For the reasons stated below, I find that the following plaintiffs waived their right to litigate, and their lawsuits are dismissed.

- i. 02 CV 7272 Alice Hoglan v. Argenbright Security, et al.
- ii. 03 CV 7019 Amy Nacke v. UAL Corp., et al.
- iii. 04 CV 1857 Mary Lou Lee v. AMR Corp., et al.

In all of these cases, plaintiffs, or someone acting with plaintiff's consent, filed sufficient information with the VCF to meet the statutory December 22, 2003 deadline and were assigned a claim number. It is uncontested that Plaintiff Nacke (03 Civ. 7019) did not withdraw her VCF application until well after January 22, 2004, by her counsel's letter dated February 27, 2004. Plaintiff Nacke argues that she was not obligated by my December 19th Order to withdraw her VCF application, as the Order only applied to suspense docket plaintiffs, and that she had activated her case by transferring it from the suspense to the active calendar on January 22, 2004. Her arguments are without merit. The clear terms of waiver provided by section 405(c)(3)(B) of the Act must control. In re September 11 Litigation, 2003 U.S. Dist. LEXIS 23561, at *9 (S.D.N.Y. Dec. 19, 2003) (“a claimant who satisfies the statutory and regulatory definition of filing or submitting a claim, will have waived his right to sue, or to maintain his suit when that

filing, or submission, is substantially complete as determined by the Special Master's Claims Evaluator or January 22, 2004, whichever is earlier, and not before then"). Ms. Nacke continued her claim with the Special Master past the January 22, 2004 date. In re September 11 Litig., 2003 U.S. Dist. LEXIS 23561, at *1-2 (S.D.N.Y. Dec. 19, 2003). Plaintiff Nacke therefore waived her right to maintain a civil action, § 405(c)(3)(B)(i), and her lawsuit is therefore dismissed.

Plaintiff Nacke styles defendants' motions as an attack on the Special Master's administrative decisions and argue that defendants lack standing to seek dismissal on these grounds as they have suffered no cognizable injury. Plaintiff, however, misunderstands the motions. Standing is a constitutional and prudential concern for federal courts. Bennett v. Spear, 520 U.S. 154, 162 (1997) (citations omitted). At a minimum, constitutional standing requires an injury in fact that is "fairly traceable" to the actions of the opponent and that likely will be redressed by a decision. Id. Defendants do not attack decisions made by the Special Master; rather, they argue that the named plaintiffs, through their own actions, waived their right to civil litigation by submitting and maintaining claims to the VCF while also pursuing litigation. If plaintiffs, notwithstanding waiver, can continue to maintain a lawsuit against defendants, defendants have a cognizable injury that is traceable to the plaintiffs' actions—failure to withdraw from the VCF. Section 405(c)(3)(B) of the Act provided the airlines and other September 11 defendants with a defense, at least in part to protect them from lawsuits such as these. Thus, defendants are within the "zone of interest" that Congress sought to protect by the waiver provision, and prudential standing requirements are satisfied. Bennett, 520 U.S. at 162-63 (citing Association of Data Processing Serv. Orgs. Inc. v. Camp, 397 U.S. 150 (1970)).

In the case of Mary Lou Lee (04 Civ. 1857), Ms. Lee filed a claim on behalf of World Trade Center ground victim Dennis Chih Min Foo in December 2003. The VCF acknowledged receipt of supplemental information on February 10, 2004. Plaintiff's counsel wrote to the VCF on April 1, 2004, withdrawing the application because Ms. Lee was "no longer interested in receiving [an] opinion, having previously elected to prosecute litigation commenced on or about March 8, 2004." Plaintiff argues that she "abandoned" her VCF claim as of January 22, 2004, relying on regulation 104.35. Section 104.35, however, provides that claims will be "abandoned" if they are outstanding at the end of the program, which is June 15, not January 22, 2004. Supplementation of her claim after January 22, 2004 further belies her argument. Plaintiff Lee also contends that she followed the VCF's practice of allowing individuals to solicit an estimate of a probable award without filing a claim. This was the issue decided in my December 19, 2003 Order and plaintiff presents no compelling reason to reconsider that decision now. Plaintiff had until January 22, 2004 to determine whether to pursue a claim in the VCF or to litigate. As plaintiff's VCF claim was "filed" on January 22, 2004, she waived her right to pursue litigation on behalf of the decedent. See In re September 11 Litig., 2003 U.S. Dist. LEXIS 23561, at *1-2 (S.D.N.Y. Dec. 19, 2003). Thus, her claim is dismissed.

The Hoglan case (02 Civ. 7272) presents a different situation from the other cases in this category. Plaintiff Alice Hoglan is the mother of Mark Bingham, who died in the crash of United Air Lines Flight 93, in Shanksville, Pennsylvania. On September 9, 2002, a California Probate Court initially named Ms. Hoglan Special Administrator of her son's estate. She filed the instant lawsuit on September 11, 2002. Gerald Bingham, Mark Bingham's father and the ex-husband of Ms. Hoglan, filed a petition with the California Probate Court in San Francisco on

October 17, 2002, requesting that he be appointed a Special Administrator in order to seek benefits from the VCF. Initially, Ms. Hoglan objected to Mr. Bingham's petition on the ground that his application to the VCF would adversely affect her lawsuit. The parties, however, reached an agreement on the matter at a December 4, 2002 hearing. Ms. Hoglan withdrew her opposition and agreed to allow Mr. Bingham to file a VCF application to seek his portion of any compensation. The Probate Court then modified the appointments, making Ms. Hoglan the General Representative and Mr. Bingham the Special Administrator with limited authority to file a claim with the VCF on his own behalf. See Letters of Probate, Cal. Sup. Ct., San Francisco (Dec. 24, 2002 and Jan. 16, 2003).

Mr. Bingham then contacted the VCF, informing it of Ms. Hoglan's lawsuit and requesting that he be allowed to pursue a claim. The VCF initially granted permission and Mr. Bingham submitted a claim on July 17, 2003. On August 29, 2004, the parties entered into an agreement specifying the division of their son's estate proceeds, which provided that Ms. Hoglan would take no adverse action to Mr. Bingham's VCF claim.⁴ The VCF, however, requires that, where more than one personal representative is appointed, all must join in the application. See § 3.11 VCF's Frequently Asked Questions. Thus, in November of 2003, the VCF placed Mr. Bingham's claim on hold pending Ms. Hoglan's waiver of suit or the dismissal of her lawsuit. Mr. Bingham continued to supplement his application through May of this year, including a letter of April 28, 2004 providing that if the VCF pays 100% of the award, it will be split equally between Ms. Hoglan and Mr. Bingham.

⁴ The agreement provides that Ms. Hoglan and Mr. Bingham would each receive an undivided 25% of distribution of Mark Bingham's estate. The other undivided 50% is to be "allocated to and distributed among charitable organizations honoring the ideals and memory of Mark Bingham."

Plaintiff argues that she has done nothing to waive her right to litigate and Mr. Hoglan lacks authority to waive this right for her. Congress, however, created the VCF as an alternative to litigation, not as a supplement to it. It is not permissible for families of those who perished in the attacks to split recoveries between the VCF and any litigation recovery, neither directly nor by appointing co-personal representatives. One family member is not allowed to take advantage of the VCF's expedited remedy while another pursues litigation. Ms. Hoglan as the General Administrator controlled Mark Bingham's estate. Her agreement that Mr. Bingham become a co-personal representative so as to seek compensation with the VCF waived her right to litigate. She ratified this decision in the August 29, 2003 agreement not to oppose his application and to split the residue of the estate. Mr. Bingham's VCF claim remained after January 22, 2004. Thus, it was deemed filed and submitted as of that date, In re September 11 Litig., 2003 U.S. Dist. LEXIS 23561, at *1-2 (S.D.N.Y. Dec. 19, 2003), and consequently, Ms. Hoglan's lawsuit is dismissed.

- b. Documentary evidence allegedly indicating that a claim was substantially complete but without the Claims Evaluator having so deemed it

Defendants argue that a VCF application may be substantially complete prior to the Claims Evaluator's designation. Defendants contend that the following plaintiffs' VCF applications were substantially complete prior to being withdrawn and therefore they waived their rights to maintain a civil action:

- i. 02 CV 7267 Gladys Salvo v. United Air Lines, et al.
- ii. 03 CV 6183 Jean & William Hunt v. Amer. Airlines, Inc., et al.
- iii. 03 CV 6966 Christine K. Fisher v. AMR Corp., et al.

- iv. 03 CV 6966 Irene M. Golinski v. AMR Corp., et al.
- v. 03 CV 6966 Julia P. Shontere v. AMR Corp., et al.
- vi. 03 CV 6966 Shirley Willcher v. AMR Corp., et al.
- vii. 03 CV 6968 Ann Wilson v. Amer. Airlines, et al.
- viii. 03 CV 7028 Patricia Quigley v. UAL Corp., et al.
- ix. 03 CV 7070 Margaret Ogonowski v. Amer. Airlines, Inc., et al.

The question presented by this category is whether regulations 104.21(a) and (d), are “permissible constructions” of the Act’s waiver provision. In determining whether the VCF’s interpretation is lawful, I must apply the two-step Chevron analysis: (1) If Congress “has directly spoken to the precise question at issue” in the text of the statute, the text governs; or (2) If the statute is “silent or ambiguous with respect to the specific issue,” then the court reviews “whether the agency’s answer is based on a permissible construction of the statute.” Chevron, U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 842-43 (1984). If the agency’s construction is permissible, the court must defer to it. Schneider v. Feinberg, 345 F.3d 135, 142 (2d Cir. 2003). Not all agency regulations are owed Chevron deference, but those that are intended to carry the “force of law” are. United States v. Mead, 533 U.S. 218, 231-32 (2001). Even agency interpretations that do not carry the force of law are entitled to “some deference” by the courts. Schneider, 345 F.3d at 143 (citing Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944)). It should be noted that the VCF’s regulations regarding the method to calculate awards were previously accorded Chevron deference. See Colaio v. Feinberg, 262 F. Supp. 2d 273 (S.D.N.Y. 2003), aff’d, Schneider, 345 F.3d 135. And I discussed favorably the VCF’s regulations at question here in my December 19, 2003 Order. See 2003 U.S. Dist. LEXIS 23561 (S.D.N.Y. Dec. 19, 2003).

Congress addressed waiver in section 405(c)(3)(B) of the Act, which provides in pertinent part: “Upon the submission of a claim under this title, the claimant waives the right to file a civil action (or to be a party to an action) in any Federal or State court.” The Act, however, did not define what constitutes a “submission of a claim.” The Special Master was given the power to “promulgate all procedural and substantive rules for the administration of” the VCF, and to develop a form for claimants to use when submitting claims. §§ 404(a)(2) and 405(a)(2). The Act specifically directed the Special Master to promulgate regulations regarding “procedures to assist an individual in filing and pursuing claims under this title.” § 407(4).

The Special Master thus promulgated regulation 104.21 to prescribe the form on which a claimant may submit a claim and to define when submission occurs. According to the regulation, “submission of a claim” occurs “when the claim is deemed filed pursuant to” the regulations. 28 C.F.R. § 104.21(d). A claim is “deemed ‘filed’ for purposes of [waiver] when a Claims Evaluator determines that both the Eligibility Form and Either a Personal Injury Compensation Form or a Death Compensation Form are substantially complete.” 29 C.F.R. § 104.21(a).

Defendants challenge the regulations primarily on the ground that Congress unmistakably intended “submission of a claim” in section 405(c)(3)(B)(i) to mean the claimant’s delivery of the claim forms to the VCF. Thus, defendants argue, the VCF’s interpretation was impermissible. Defendants argue that submission must be construed in relation to an act of the claimant at the time of filing, not at a later date when a Claims Evaluator deems the claim submitted.

Congress did not specify how the phrase “submission of a claim” should be defined. Clearly, however, it intended an accessible and interactive process between the Special Master and his staff and aggrieved claimants. Congress passed the Act quickly, in the first eleven days after the terrorist attacks. There were few, if any, antecedents for the VCF. Congress delegated to the Attorney General and the Special Master, using traditional notice and comment procedure to develop rules and regulations and interpretative guidelines for forms and procedures, so that claimants would be able to evaluate their rights and remedies, make intelligent choices and be assured of fair, reliable and expeditious treatment by the VCF. See The Act § 405(a); Colaio v. Feinberg, 262 F. Supp. 2d 273 at 280-81 (S.D.N.Y. 2003), aff’d, Schneider v. Feinberg, 345 F.3d 135 (2d Cir. 2003). Section 104.21 of the VCF regulations is entitled to Chevron deference, and I so hold.

Furthermore, the nature of the VCF scheme necessarily required that the Special Master have discretion and scope in developing working forms and submission policies. In developing the form, it became clear that at least two items must occur for a claim to be substantially complete: (1) the VCF must determine a claimant’s eligibility; and (2) the claimant must provide sufficient information to allow the VCF to calculate an award and offsets. The Act provides that a “claimant shall be determined to be an eligible individual . . . if the Special Master determines” certain specified criteria. § 405(c). Thus, the scheme required determination by the Special Master as a necessary condition for considering when an application is substantially complete.

The Act also requires the Special Master to complete review of a claim within 120 days of filing. This requirement of expedition created a risk of administrative overload in the

crush of filings as the December 22, 2003 deadline approached. The Special Master and his staff needed some slack in reviewing applications for substantial completeness. Establishing a determination by a Claims Evaluator gave the Special Master requisite flexibility to enable him to be responsive to the rules and procedures that governed his activities and the needs of VCF claimants.

Defendants argue that the court should determine when an application became substantially complete, even if the application was not so deemed by the VCF. The VCF has now spent nearly three years processing claims. I see no reason to substitute the court's judgment for the Special Master's in determining when a claim is substantially complete.

Moreover, to read the statute as narrowly as defendants suggest would place the requirement to determine claims expeditiously in tension with the need to provide information to claimants about the VCF. The Act does not prohibit claimants from investigating the VCF. Indeed, Congress recognized that, as an entirely unique statutory creation, investigation by claimants was necessary for the VCF to work and directed the Special Master to assist individuals in pursuing claims.⁵ See The Act § 407(4). To this end, Special Master Feinberg invited and encouraged the victims and families of victims to seek informal review of potential claims to assist them in deciding between the VCF and litigation. Given the vast array of financial and familial circumstances of the September 11 victims, it was necessary for claimants to provide the VCF with information on which to base potential awards.

⁵ Indeed, a personal representative may reasonably have concluded that they had an obligation on behalf of the victim's estate to investigate the alternative remedies provided for in the Act in order to determine which option best suited the estate.

Defendants argue that plaintiffs submitted a large volume of documents, over 200 pages in some cases, suggesting that their claims were substantially complete and that more than informed review was involved. The documents, however, largely comprised three to four years of tax returns and do not support defendants' argument of substantial completeness.

Defendants also argue that under the VCF's construction a claim could be complete and remain not "submitted" because it had not been so deemed. They contend that the regulation could indefinitely defer a condition of waiver, and that it is impermissible to do so under the Act. The argument is without merit. The VCF provided that January 22, 2004 would constitute an outside date for making a claim substantially complete, and my Order of December 19, 2003 so provided as well. The VCF also required that a claimant acknowledge that he has waived his litigation rights before payment will be made, thus insuring that dual recovery will not occur.

Having found that regulation 104.21 is permissible, I now consider the factual circumstances presented by the cases in this category. All plaintiffs in this category, except for Hunt, presented information to the VCF on behalf of deceased victims. These plaintiffs provided various documents to the VCF, including tax returns, employment information, collateral source documents, personal representative determinations and family documentation (e.g., birth, marriage and death certificates). Only plaintiff Hunt in this category signed a waiver provision as part of the application provided to the VCF.⁶ All of the plaintiffs withdrew their VCF applications on or before January 22, 2004 and before the VCF Claim Evaluator deemed them substantially

⁶ Plaintiff Wilson's counsel mistakenly produced a signed waiver form from his files to defendants' counsel. Wilson did not sign a waiver form in the packet that she gave to the VCF. The record was corrected at oral argument.

complete.⁷ The VCF did not deem the claims of any of these plaintiffs substantially complete under regulation 104.21. As I find regulation 104.21 permissible under the Act, I cannot find that these plaintiffs have waived their right to litigate. Thus, defendants' motion is denied as to these plaintiffs.

The Hunt case presents slightly different facts. Jean Hunt submitted information regarding injuries she allegedly suffered at the Pentagon to the VCF on December 28, 2001, requesting advance benefits. Ms. Hunt acknowledged "that by submission of a substantially complete Eligibility Form I am *waiving* the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the" attacks. Barry Ex. 97, page 4 (emphasis provided). The VCF reviewed her application and on March 28, 2003 informed her that only some of her injuries were eligible for compensation. Upon Ms. Hunt's request, the VCF reconsidered her determination in April of 2003 and affirmed its decision. The VCF also indicated that Ms. Hunt's claim was not substantially complete and listed the additional information necessary to deem the application substantially complete. Rather than file the additional information, Ms. Hunt withdrew her application on August 13, 2003. She filed the instant lawsuit on August 18, 2003.

Defendants argue that Ms. Hunt's case should be dismissed on two grounds: because she filed for advance benefits; and because she waived her litigation rights by signing the acknowledgment. Neither argument is persuasive. Under section 405(c)(3)(B)(i), an application is not statutorily waived until a claim is deemed substantially complete, or January 22, 2004. See 28 C.F.R. § 104.21. If a claimant is eligible to recover from the VCF, he may be deemed eligible for

⁷ In the Salvo case, the VCF, by letter of February 12, 2004, confirmed that no claim was ever opened. All of the other plaintiffs formally withdrew their applications from the VCF.

advanced benefits. 28 C.F.R. § 104.22(d). A claimant's request for advanced benefits, however, does not automatically make a submission substantially complete. The application as a whole must be deemed substantially complete for it to be statutorily waived; eligibility, is only part of that determination. Ms. Hunt withdrew before either the VCF deemed her claim substantially complete or January 22, 2004. Therefore, the statutory waiver does not apply.⁸

As to defendants' second argument, a voluntary waiver is not lightly presumed to be binding. A voluntary waiver may generally be withdrawn under certain circumstances. See e.g., U.C.C. § 2-209 (allowing withdrawal of a waiver when reasonable notice is provided and it was not relied upon). Ms. Hunt withdrew her application on August 13, 2003, effectively revoking the acknowledgment of the waiver that she had signed. Furthermore, the condition of substantial completeness expressed in the acknowledgment never came to pass. The VCF did not pay Ms. Hunt benefits and there is no evidence that her waiver was relied upon. Ms. Hunt was free, therefore, to revoke her waiver, and defendants' motion to dismiss Ms. Hunt's suit is denied.

c. Situations where the decedent's personal representative submitted a VCF claim and another related individual filed a lawsuit

Defendants move for summary judgment against three plaintiffs in this category. The cases are: Allan Hackel v. AMR Corp., et al. (02 Civ. 7143); Clifford and Dorothy Tempesta v. AMR Corp., et al. (02 Civ. 7244); and Lucy Aita v. UAL Corp., et al., (04 Civ. 2519).

⁸ Defendants rely on a statement made by the Department of Justice in the interim final rule that "once a claimant applies for Advance Benefits, the claimant will be deemed to have waived the right to file a civil action in state or federal court for damages sustained as a result of the September 11 attacks." 66 Fed. Reg. 66,274, 66,277. This language, however, was not included in the final regulation. See 28 C.F.R. §§ 104.21 and 104.22.

Allan Hackel, a domiciliary of Massachusetts and the husband of Paige Farley Hackel, a passenger on American Airlines Flight 11 when it crashed into the north tower of the World Trade Center, filed suit on September 9, 2002 and a second amended complaint on January 14, 2004, alleging claims of negligence, strict liability, breach of warranty, wrongful death, survival and negligent infliction of emotional distress. Marjorie Farley, the mother of Ms. Hackel and the executrix of her estate appointed by Paige Farley Hackel's will, submitted a claim to the VCF, and filed an application for advance benefits. Mr. Hackel objected, asserting that his wife named her mother as executrix for convenience. He explains that since he was much older than his wife, and they anticipated that she would outlive him, she named her mother to be executrix. On November 4, 2002, the Special Master denied Mr. Hackel's objection, and determined that Ms. Farley was the proper personal representative of the decedent. Ms. Farley received a presumed award determination from the VCF in February, 2003 and was subsequently issued payment for her VCF claim.

The Tempesta issues are similar. The decedent, Anthony Tempesta, was an employee of Cantor Fitzgerald, and perished as a result of the fires and collapse of the north tower following the American Airlines Flight 11 crash. His parents, Clifford and Dorothy Tempesta, filed suit on September 10, 2002, alleging claims of wrongful death, survival, strict liability, negligence and breach of warranty. His wife, Ana Maria Tempesta and the administratrix of his estate, submitted a claim to the VCF. The VCF determined the claim to be substantially complete on July 15, 2003, and subsequently issued payment. In March of 2004, the VCF approved a final distribution plan for the award, naming Ana Maria and the decedent's children as beneficiaries. The Tempesta plaintiffs, the parents, did not file opposition papers to defendants' motion to

dismiss their lawsuit as waived. Plaintiffs' counsel orally objected to defendants' motions, without elaboration, on constitutional grounds.

The facts presented by the Lucy Aita lawsuit are essentially similar to the Hackel and Tempesta lawsuits. Plaintiff Aita did not file opposition papers to defendants' motion to dismiss.

The issue presented by these three lawsuits is whether both a VCF claim and a lawsuit may be brought on behalf of the same victim of the September 11th attacks. Defendants argue that to allow plaintiffs to maintain a civil action for a decedent who is also the subject of a proper VCF claim would sanction dual recoveries. Defendants also argue that these plaintiffs, not having been appointed as legal representative under the state laws applicable to their decedents, lack standing to pursue their civil actions.

Plaintiff Hackel argues that Ms. Farley's VCF claim should not act as a bar to his own lawsuit. Narrowing his allegations, he argues that he proposes to sue only on his own behalf and for his own damages, and not on behalf of his late wife's estate. He argues that the VCF award does not include the damages he personally suffered. The argument, however, is inconsistent with the statutory scheme.

The Act was intended to provide alternative paths to victims of the terrorist-related aircraft crashes of September 11, 2001, to enable them to gain compensation for their loss. Congress' stated purpose in providing alternative forms of recovery was to "provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of the" attacks. Only one claim on behalf of a victim may be submitted. The Act § 405(c)(3)(A); see also 147 Cong. Rec. S 9594 (Sept. 21, 2001) (remarks of Sen. McCain: "victims

and their families may, but are not required to, seek compensation from the Federal fund instead of through the litigation system”) and *id.* at S 9599 (remarks of Sen. Leahy: “a claim under the program will preclude other civil remedies”). Recovery from the VCF was to be channeled through a personal representative. 66 Fed. Reg. 66,275.⁹

The Act instructs the personal representative to present information “concerning any possible economic and noneconomic losses that the claimant suffered.” § 405(a)(2)(B)(ii). Claimants are compensated for such losses to the extent allowable under applicable state law. See The Act § 402(5); 28 C.F.R. § 104.42. Section 402 defines the key terms. For deceased victims, the “claimant” is the personal representative. §§ 402(5), 405(c)(2)(C). “Economic loss” is “any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.” The Act § 402(7). “Noneconomic losses” are “losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any

⁹ The states whose laws would potentially govern tort actions in these cases likewise channel wrongful death claims through the decedent’s personal representative. Substantive law in cases under the Act “shall be derived from the law, including choice of law principles, of the State in which the crash occurred unless such law is inconsistent with or preempted by Federal law.” § 408(b)(2). As both *Hackel* and *Tempesta* concern deaths that occurred as a result of the crash of Flight 11 into the north tower of the World Trade Center, New York state law applies where not preempted by federal law. Under New York’s choice of law principles, New York and Massachusetts, Ms. Hackel’s domicile at death, are the only potentially relevant jurisdictions in determining these two cases. See *Schultz v. Boy Scouts of Am., Inc.*, 480 N.E.2d 679, 684-85 (N.Y. 1985). In both New York and Massachusetts, only a personal representative, executor or administrator of the deceased may bring a claim for wrongful death. See N.Y. Est. Powers & Trusts Law § 5-4.1 - 4.6; Mass. Gen. Laws, ch. 229 § 2.

kind or nature.” The Act § 402(9). The regulations further provide a presumed non-economic loss of \$250,000 for each decedent and an additional \$100,000 for the spouse and each dependent of a decedent. 28 C.F.R. § 104.44. Once the VCF determines a compensation award, the personal representative provides a plan for distribution, which is reviewed by the Special Master and may be amended to adequately compensate relatives of the deceased. 28 C.F.R. § 104.4.

Thus, the personal representative presents to the VCF all economic and noneconomic losses that may be brought in a claim, and claims for all damages, other than punitive damages, § 405(b)(5), are compensable by the VCF. Therefore, a VCF award encompasses all potential claims that could be made, including personal losses like plaintiff Hackel alleges, both economic and noneconomic. Plaintiff Hackel’s argument, that he should be able to seek damages for his own emotional distress, would give him a dual recovery, impermissible under the Act. The VCF’s award to the legal representative of Mrs. Hackel’s estate embraces the damages that Mr. Hackel also seeks. As such, his lawsuit must be dismissed.

It is unfortunate that all families could not agree on the remedy they would pursue. However, only one remedy is permissible, and Congress directed that the choice lies with the legal representative, who in these three cases chose to file with the VCF.

For the reasons stated, the Hackel, Tempesta and Aita cases are dismissed.

III. Conclusion

For the reasons stated, I hereby grant defendants’ motions as to the following plaintiffs:

- i. 02 CV 7272 Alice Hoglan v. Argenbright Security, et al.
- ii. 03 CV 7019 Amy Nacke v. UAL Corp., et al.


- iii. 04 CV 1857 Mary Lou Lee v. AMR Corp., et al.
- iv. 02 Civ. 7143 Allan Hackel v. AMR Corp., et al.
- v. 02 Civ. 7244 Clifford Tempesta v. AMR Corp., et al.
- vi. 04 Civ. 2519 Lucy A. Aita v. UAL Corp. et al.

And I deny defendants' motions in regard to these plaintiffs:

- i. 02 CV 7267 Gladys Salvo v. United Air Lines, et al.
- ii. 03 CV 6183 Jean & William Hunt v. Amer. Airlines, Inc., et al.
- iii. 03 CV 6966 Christine K. Fisher v. AMR Corp., et al.
- iv. 03 CV 6966 Irene M. Golinski v. AMR Corp., et al.
- v. 03 CV 6966 Julia P. Shontere v. AMR Corp., et al.
- vi. 03 CV 6966 Shirley Willcher v. AMR Corp., et al.
- vii. 03 CV 6968 Ann Wilson v. Amer. Airlines, et al.
- viii. 03 CV 7028 Patricia Quigley v. UAL Corp., et al.
- ix. 03 CV 7070 Margaret Ogonowski v. Amer. Airlines, Inc., et al.

SO ORDERED.

Dated: New York, New York
June 10, 2004


ALVIN K. HELLERSTEIN
United States District Judge

Schedule A

This Opinion relates to the following cases:

02 Civ. 7143	Allan Hackel v. AMR Corp., et al.
02 Civ. 7244	Clifford Tempesta v. AMR Corp., et al.
02 Civ. 7267	Gladys Salvo v. United Air Lines, Inc., et al.
02 Civ. 7272	Alice Hoglan v. Argenbright Security, et al.
03 Civ. 6183	Jean & William Hunt v. Amer. Airlines, Inc., et al.
03 Civ. 6966	Codero, et al. v. AMR Corp., et al. (as to plaintiffs: Christine K. Fisher, Irene M. Golinski, Julia P. Shontere and Shirley Willcher)
03 Civ. 6968	Ann Wilson v. Amer. Airlines, et al.
03 Civ. 7019	Amy Nacke v. UAL Corp., et al.
03 Civ. 7028	Patricia Quigley v. UAL Corp., et al.
03 Civ. 7070	Margaret Ogonowski v. Amer. Airlines, Inc., et al.
04 Civ. 1857	Mary Lou Lee v. AMR Corp. et al.
04 Civ. 2519	Lucy A. Aita v. UAL Corp. et al.

APPENDIX B

CHART OF MOTIONS FOR SUMMARY JUDGMENT AND DEFENDANTS JOINING MOTIONS

I- MOTION FOR SUMMARY JUDGMENT OF AMERICAN AIRLINES, INC. AND AMR CORPORATION

Defendant	Cases in which Defendant is Moving for Summary Judgment
American Airlines, Inc. and AMR Corporation	04 CV 2519 Aita 03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 02 CV 7272 Hoglan 03 CV 6183 Hunt 03 CV 7018 Judge 04 CV 1857 Lee 03 CV 7018 Newton 03 CV 7070 Ogonowski 03 CV 7028 Quigley 03 CV 6966 Shontere 02 CV 7244 Tempesta 03 CV 6966 Willcher 03 CV 6968 Wilson
Airtran Airways, Inc.	02 CV 7143 Hackel 03 CV 6183 Hunt 03 CV 7070 Ogonowski
America West Airlines, Inc.	02 CV 7143 Hackel 02 CV 7272 Hoglan 03 CV 7070 Ogonowski
Argenbright Security Inc.	03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7272 Hoglan 03 CV 6183 Hunt 03 CV 7018 Judge 03 CV 7018 Newton 03 CV 6966 Shontere 03 CV 6966 Willcher

Atlantic Coast Airlines, Inc.	03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 03 CV 6183 Hunt 03 CV 7018 Judge 03 CV 7018 Newton 03 CV 6966 Shontere 03 CV 6966 Willcher
ATA Airlines, Inc.	02 CV 7143 Hackel 03 CV 7070 Ogonowski
The Boeing Company	04 CV 2519 Aita 03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 02 CV 7272 Hoglan 03 CV 6183 Hunt 03 CV 7018 Judge 04 CV 1857 Lee 03 CV 7018 Newton 03 CV 7070 Ogonowski 03 CV 7028 Quigley 03 CV 6966 Shontere 02 CV 7244 Tempesta 03 CV 6966 Willcher 03 CV 6968 Wilson
Colgan Air, Inc.	02 CV 7143 Hackel 04 CV 1857 Lee 03 CV 7070 Ogonowski 03 CV 7133 Salvo 02 CV 7244 Tempesta 03 CV 6968 Wilson
Continental Airlines	02 CV 6364 Baker 03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 02 CV 7272 Hoglan 03 CV 6183 Hunt 03 CV 7018 Judge 04 CV 1857 Lee 03 CV 7019 Nacke 03 CV 7018 Newton 03 CV 7028 Ogonowski

	03 CV 7028 Quigley 03 CV 6966 Shontere 03 CV 6966 Willcher
Delta Air Lines, Inc.	03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 03 CV 6183 Hunt 03 CV 7018 Judge 03 CV 7018 Newton 03 CV 7070 Ogonowski 03 CV 7028 Quigley 03 CV 6966 Shontere 03 CV 6966 Willcher 03 CV 6968 Wilson
Globe Aviation Services Corporation	02 CV 7143 Hackel 04 CV 1857 Lee 03 CV 7070 Ogonowski 02 CV 7244 Tempesta 03 CV 7028 Quigley 03 CV 6968 Wilson
Huntleigh USA Corporation	02 CV 7143 Hackel 04 CV 1857 Lee 03 CV 7070 Ogonowski 03 CV 7028 Quigley 02 CV 7244 Tempesta 03 CV 6968 Wilson
ICTS International	02 CV 7143 Hackel 03 CV 7070 Ogonowski 03 CV 7028 Quigley 02 CV 7267 Salvo 02 CV 7244 Tempesta 03 CV 6968 Wilson
Leslie E. Robertson Associates, R.L.L.P.	02 CV 7244 Tempesta 03 CV 6968 Wilson
Massachusetts Port Authority	02 CV 7143 Hackel 04 CV 1857 Lee 03 CV 7070 Ogonowski 03 CV 7028 Quigley 02 CV 7267 Salvo 02 CV 7244 Tempesta 03 CV 6968 Wilson
Metropolitan Washington Airports Authority	03 CV 6183 Hunt

	03 CV 6966 Willcher
Midwest Airlines, Inc.	03 CV 7028 Quigley
Minoru Yamasaki Associates	04 CV 1857 Lee 02 CV 7244 Tempesta 03 CV 6968 Wilson
Northwest Airlines, Inc.	03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 02 CV 7272 Hoglan 03 CV 6183 Hunt 03 CV 7018 Judge 04 CV 1857 Lee 03 CV 7018 Newton 03 CV 7070 Ogonowski 03 CV 6966 Shontere 03 CV 6966 Willcher
The Port Authority of New York and New Jersey (Operators of Newark International Airport)	02 CV 7272 Hoglan
Skilling Ward Magnusson Barkshire, Inc. and Magnusson Klemencic Associates	04 CV 1857 Lee 02 CV 7244 Tempesta 03 CV 6968 Wilson
Tishman Realty and Construction Company, Inc.	04 CV 1857 Lee 02 CV 7244 Tempesta 03 CV 6968 Wilson
United Air Lines, Inc. and UAL Corp.	04 CV 2519 Aita 03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 03 CV 6183 Hunt 03 CV 7018 Judge 04 CV 1857 Lee 03 CV 7018 Newton 03 CV 7070 Ogonowski 03 CV 7028 Quigley 03 CV 6966 Shontere 03 CV 6966 Willcher

US Airways, Inc., US Airways Group, Inc. and US Airways Group, Inc. d/b/a US Airways Express	03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 02 CV 7272 Hoglan 03 CV 6183 Hunt 03 CV 7018 Judge 04 CV 1857 Lee 03 CV 7018 Newton 03 CV 7070 Ogonowski 02 CV 7267 Salvo 03 CV 6966 Shontere 02 CV 7244 Tempesta 03 CV 6966 Willcher 03 CV 6968 Wilson
World Trade Center Properties LLC	04 CV 1857 Lee 03 CV 6968 Wilson

II- MOTION FOR SUMMARY JUDGMENT OF WORLD TRADE CENTER PROPERTIES LLC

Defendant	Cases in which Defendant is Moving for Summary Judgment
World Trade Center Properties LLC	04 CV 2519 Aita 04 CV 1857 Lee 02 CV 7244 Tempesta 03 CV 6968 Wilson
American Airlines, Inc. and AMR Corporation	03 CV 6966 Fisher 03 CV 6966 Golinski 03 CV 6183 Hunt 03 CV 7070 Ogonowski 03 CV 7028 Quigley 03 CV 6966 Shontere 03 CV 6966 Willcher 03 CV 6968 Wilson
Continental Airlines	02 CV 6364 Baker 03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 02 CV 7272 Hoglan 03 CV 6183 Hunt 03 CV 7018 Judge 04 CV 1857 Lee 03 CV 7019 Nacke

	03 CV 7018 Newton 03 CV 7028 Ogonowski 03 CV 7028 Quigley 03 CV 6966 Shontere 03 CV 6966 Willcher
Delta Air Lines, Inc.	03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 03 CV 6183 Hunt 03 CV 7018 Judge 03 CV 7018 Newton 03 CV 7070 Ogonowski 03 CV 7028 Quigley 03 CV 6966 Shontere 03 CV 6966 Willcher 03 CV 6968 Wilson
Minoru Yamasaki Associates	04 CV 1857 Lee 02 CV 7267 Salvo 02 CV 7244 Tempesta 03 CV 6968 Wilson
Northwest Airlines, Inc.	03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 02 CV 7272 Hoglan 03 CV 6183 Hunt 03 CV 7018 Judge 04 CV 1857 Lee 03 CV 7018 Newton 03 CV 7070 Ogonowski 03 CV 6966 Shontere 03 CV 6966 Willcher
Skilling Ward Magnusson Barkshire, Inc. and Magnusson Klemencic Associates	04 CV 1857 Lee 02 CV 7244 Tempesta 03 CV 6968 Wilson
Tishman Realty and Construction Company, Inc.	04 CV 1857 Lee 02 CV 7244 Tempesta 03 CV 6968 Wilson

III- MOTION FOR SUMMARY JUDGMENT OF UNITED AIR LINES, INC. AND UAL CORP.

Defendant	Cases in which Defendant is Moving for Summary Judgment
United Air Lines, Inc. and UAL Corp.	03 CV 7019 Nacke 02 CV 7267 Salvo
Argenbright Security Inc.	03 CV 7019 Nacke
Colgan Air, Inc.	02 CV 7143 Hackel 04 CV 1857 Lee 03 CV 7070 Ogonowski 03 CV 7133 Salvo 02 CV 7244 Tempesta 03 CV 6968 Wilson
Continental Airlines	02 CV 6364 Baker 03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 02 CV 7272 Hoglan 03 CV 6183 Hunt 03 CV 7018 Judge 04 CV 1857 Lee 03 CV 7019 Nacke 03 CV 7018 Newton 03 CV 7028 Ogonowski 03 CV 7028 Quigley 03 CV 6966 Shontere 03 CV 6966 Willcher
Delta Air Lines, Inc.	03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 03 CV 6183 Hunt 03 CV 7018 Judge 03 CV 7018 Newton 03 CV 7070 Ogonowski 03 CV 7028 Quigley 03 CV 6966 Shontere 03 CV 6966 Willcher 03 CV 6968 Wilson
Globe Aviation Services Corporation	02 CV 7267 Salvo

Huntleigh USA Corporation	02 CV 7267 Salvo
ICTS International	02 CV 7267 Salvo 03 CV 6968 Wilson
Leslie E. Robertson Associates, R.L.L.P.	02 CV 7267 Salvo
Massachusetts Port Authority	02 CV 7143 Hackel 04 CV 1857 Lee 03 CV 7028 Quigley 02 CV 7267 Salvo 02 CV 7244 Tempesta 03 CV 6968 Wilson
Minoru Yamasaki Associates, Inc.	02 CV 7267 Salvo
Northwest Airlines, Inc.	03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 02 CV 7272 Hoglan 03 CV 6183 Hunt 03 CV 7018 Judge 04 CV 1857 Lee 03 CV 7018 Newton 03 CV 7070 Ogonowski 03 CV 6966 Shontere 03 CV 6966 Willcher
Skilling Ward Magnusson Barkshire Inc. and Magnusson Klemencic Associates, Inc.	02 CV 7267 Salvo
Tishman Realty and Construction Company, Inc.	02 CV 7267 Salvo
US Airways, Inc., US Airways Group, Inc. and US Airways Group, Inc. d/b/a US Airways Express	03 CV 7018 Dillard 03 CV 7018 Droz 03 CV 6966 Fisher 03 CV 6966 Golinski 02 CV 7143 Hackel 02 CV 7272 Hoglan 03 CV 6183 Hunt 03 CV 7018 Judge 04 CV 1857 Lee 03 CV 7018 Newton 03 CV 7070 Ogonowski 02 CV 7267 Salvo 03 CV 6966 Shontere 02 CV 7244 Tempesta

	03 CV 6966 Willcher
	03 CV 6968 Wilson